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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,625	08/09/2002	Thomas T Allgeuer	ADVA:004	6821

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Robert M O'Keefe  
O'Keefe Egan & Peterman  
Building C Suite 200  
1101 Capital of Texas Highway South  
Austin, TX 78746

EXAMINER

CHEN, VIVIAN

ART UNIT PAPER NUMBER

1773

DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/031,625	Applicant(s) ALLGEUER ET AL.	
	Examiner Vivian Chen	Art Unit 1773	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 24-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 24-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9-2003</u>  | 6) <input type="checkbox"/> Other: _____                                    |

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## **DETAILED ACTION**

1. Claims 2-23 have been cancelled by Applicant.

### ***Election/Restrictions***

2. Applicant's election of Group I in Paper No. 11/3/2003 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Specification***

3. The amendment filed 11/3/203 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the newly added claim limitations as set forth in claims 30-34, 40-44, 48, 51-54. Due to the length of the specification, number of newly added claims, and the complete lack of information as to where support for each newly added claim may be found, Applicant is required to point out *with specificity* the portions of the specification which provides support for the newly added claim limitations.

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 30-34, 40-44, 48, 51-54 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention, for the reasons stated above in the objection to the amendment filed 11/3/2003. Due to the length of the specification, number of newly added claims, and the complete lack of information as to where support for each newly added claim may be found, Applicant is required to point out *with specificity* the portions of the specification which provides support for the newly added claim limitations.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1, 24-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the claims, the phrase "substantially solid" is vague and indefinite because it is unclear what constitutes "substantially solid" versus merely being solid.

In the claims, the phrase "fibril-like" is vague and indefinite because it is unclear what degree of similarity is required for a structure to be considered fibril "-like".

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 24-35, 37-48, 50-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over STEEL ET AL (US 3,696,183) in view of GRUBER ET AL (US 5,484,881).

STEEL ET AL discloses a thermoplastic film or sheet comprising a fibril-bearing layer, wherein the fibril-bearing layer is formed of addition polymers such as polymers and copolymers of vinyl chloride, ethylene, propylene, and/or styrene, or condensation polymers such as polyesters. The fibril-bearing layer may comprise the entire film, or the film optionally contains one or more additional layers, wherein the fibril-bearing layer may be supplied in the form of a coating on a support layer or as a foam layer. The fibrils may be present on the entire surface, or may be limited to specific regions. The fibril-surfaced films or sheets are suitable for use in disposable hygienic or sanitary articles. The density and the length of the fibrils are controlled by the appropriate selection of fibril-forming conditions and the materials used to generate the

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fibrils and the material from which the fibril themselves are made. (lines 8-25, col. 2; lines 51-68, col. 2; line 55, col. 3 to line 2, col. 4; lines 1-10, col. 6; lines 42-57, col. 8; lines 20-27, col. 10) However, the reference does not specifically disclose the use of polylactides in fibril-surface films.

GRUBER ET AL discloses that it is well known in the art to utilize biodegradable polylactide polymers in disposable articles in order to obtain economical, environmentally friendly, compostable articles, wherein plasticizers are typically used in combination with the polylactide polymers to improve processibility and flexibility (claims 24, 26, 35). (lines 50-55, col. 4; line 59, col. 12 to line 25, col. 13).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use known biodegradable condensation polymers such as polylactides as the fibril-bearing layer as disclosed in STEEL ET AL in order to produce soft, comfortable, and/or nonslip articles which are readily disposable and compostable. One of ordinary skill in the art would have selected the density and the height of the fibrils (claims 29, 37-44) in order to optimize the cushioning, frictional, and/or other physical properties of the surface-textured films for intended end use. It would have been obvious to select the thermoplastic polymer used for the textured surface (claim 34) depending on the specific mechanical properties and/or fibril-forming characteristics (e.g., melt processing characteristics) needed to obtain a specific type of microtexture. It would have been obvious to combine oriented backing layers in the films of STEEL ET AL (claim 48) in order to improve mechanical and/or barrier properties of the resulting laminate structure, and also would have been obvious to utilize elastic backing layers (claim 50) in order to produce form-fitting or stretchable textured laminates. One of ordinary

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skill in the art would have used conventional adhesion-promoting treatments such as corona discharge (claim 51) in order to improve the adhesion of the fibril-surfaced film to subsequently applied coatings. It would have been obvious to form a fibril-bearing surface on both sides of a film structure (claim 52) depending on the specific aesthetic, frictional, and/or tactile requirements of a given application.

10. Claim 36, 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over STEEL ET AL (US 3,696,183) in view of GRUBER ET AL (US 5,484,881), as applied to claim 1 above, and further in view of HEMMING (US 3,987,228).

HEMMING discloses that it is well known in the art to crosslink fibril-surfaced thermoplastic films in order to increase durability and abrasion resistance (Abstract; column 1).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to crosslink the fibril-bearing layer as disclosed in STEEL ET AL in order to improve the durability and abrasion resistance of the fibril-bearing surface.

### ***Response to Arguments***

11. Applicant's arguments in regard to JOHNSTON ET AL and EP '653 have been considered but are moot in view of the new ground(s) of rejection.

The Examiner wishes to point out that JOHNSTON ET AL and EP '653 are being relied upon in the previous Office Action to illustrate that the *common feature* (i.e., a surface having fibril microstructures) in claims 1-3 is known in the prior art. Since the specific polymers are not recited in claims 2-3, the recited polymers are *not* a common feature in all three Groups of

inventions and therefore does not need to be disclosed in the relied upon references for the purposes of the restriction requirement.

### *Conclusion*

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivian Chen whose telephone number is (571) 272-1506. The examiner can normally be reached on Monday through Thursday from 8:30 AM to 6 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau, can be reached on (571) 272-1516. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

The General Information telephone number for Technology Center 1700 is (571) 272-1700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 19, 2004



Vivian Chen  
Primary Examiner  
Art Unit 1773